



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)

(Implements RCW 34.05.310)

Do NOT use for expedited rule making

Agency: Department of Ecology A.O.#

07-07

Subject of possible rule making: This rulemaking proposes to adopt requirements for mercury emissions from coal-fired power plants into Chapter 173-406 WAC and WAC 173-400-112 and 173-400-113. A new federal rule establishes a national cap on mercury emissions and gives each state a mercury budget. States may adopt the federal rules or they may adopt rules that are more stringent. The rulemaking will determine Washington State requirements in place of the federal rule, opt out of mercury trading and establish emission standards through a phased approach. This rulemaking will develop a methodology to distribute mercury emission credits in Washington State, including evaluating establishing an in-state trading program for those credits once the state is not participating in the federal program. This rule may also adopt by reference requirements for new coal-fired electrical generating units under the NSPS program, with adoption of more stringent requirements being evaluated.

This action will also change the name of Chapter 173-406 WAC from the Acid Rain Rule to the Electric Generating Unit Rule and replace the current requirements for the Acid Rain Program with adoption by reference of the federal requirements.

Statutes authorizing the agency to adopt rules on this subject: RCW 70.94.331, RCW 70.94.141, RCW 70.94.154, RCW 70.94.850 and RCW 70.94.860.

Reasons why rules on this subject may be needed and what they might accomplish: These rules will implement the federal Clean Air Mercury Rules adopted by EPA in May 2005. The federal rules have state air agency requirements that begin in 2006 and source specific requirements that begin in 2009. EPA's rules will apply in Washington if we fail to adopt our own by November 2006. We intend to complete the rulemaking process as soon as possible, knowing that the state rules will substitute for the federal rules once EPA approves them. The Washington State rules will establish our procedure to distribute mercury emission credits to coal-fired power plants and determine when emissions trading will and will not be allowed in Washington. Establishing a stringent emission limit would be part of the mercury emissions distribution plan and will require TransAlta, currently the sole coal-fired power plant in Washington, to install controls to meet the limit.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: EPA Region 10, Energy Facility Site Evaluation Council or EFSEC, and CTED will be involved in this effort. They will be part of the stakeholder group assisting with the rule development effort. EFSEC has independent authority to regulate new energy facilities in Washington State. EFSEC and Ecology will be working closely with each other to propose rules in tandem that represent the Washington State approach to regulating mercury emissions from existing and future coal-fired power plants.

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
☐ Pilot rule making
☐ Agency study

☒ Other (describe) This rulemaking is to amend an existing rule. Amendments to the rule will be drafted and reviewed internally and by an advisory group. The public will be provided with the opportunity to comment on the proposed rule. At least 1 public hearing will be held. The proposed amendments will be posted on the agency website and provided to parties that have identified themselves as interested parties.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication: Interested parties can access more information on this rulemaking by contacting the Ecology staff member listed below or accessing the Ecology website: <http://www.ecy.wa.gov/law/rules/index.html>

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DATE

3/20/07

NAME (TYPE OR PRINT)

Stuart A. Clark

SIGNATURE

 FOR STU CLARK

TITLE

Air Quality Program Manager

CODE REVISER USE ONLYCODE REVISER'S OFFICE
STATE OF WASHINGTON
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